> involved, and we have to keep the sentences in perspective with the sentences that have been passed on other occasions for offences involving criminal activity of this kind, though of course varying in their gravity. Clearly a deterrent element has to be involved, but because the offences are very serious, it does not necessarily follow that on the particular facts very long sentences are justified.

Now in regard to the comparison of past sentences, this Court has always embarked on giving discount or credit for the plea of guilty. The learned Deputy Public Prosecutor is conversant with the attitude of this Court in relation to offenders who plead guilty. The practice of giving credit or discount for pleading guilty finds support in the decision of the Supreme Court in *Mohamed Abdullah Ang Swee Kang v. PP* [1988] 1 MLJ 167 SC. As to the quantum of discount, Mohamad Azmi SCJ speaking for the Supreme Court, had this to say:

> It is generally accepted that the extent of the reduction on account of a plea of guilty would be between one-quarter and one-third of what otherwise would have been the sentence.

In short, the Accused on a plea of guilty is entitled to a discount of between one-quarter to one-third of the sentence.

It must be borne in mind that the credit or discount is not in relation to the maximum sentence imposed by law (in this case: "... shall be punished with imprisonment for a term which may extend to ten years, or with fine, or with both ..."), but rather in a sentence which would have been imposed on the Accused had he claimed trial and had been found guilty on the amended charge under the second limb of s. 304 of the Penal Code (see **Halsbury's Law of England,** 4th Edn., paragraph 483).

In the circumstances, had the trial gone on, and at the end of the day, the Accused found guilty, he would be sentenced to 7 $^{1}/_{2}$ years' imprisonment or 90 months' imprisonment with effect from the date of his arrest. But since he had pleaded guilty, on the basis of one-third discount, 5 years' imprisonment was imposed to run with effect from the date of his arrest (30th January, 1991).

Order accordingly.

TWENTY FIRST CENTURY OILS SDN. BHD.

v.

BANK OF COMMERCE (M) BHD. & 2 ORS.

HIGH COURT, KUALA LUMPUR
DATO' SHAIK DAUD J.
[CIVIL SUIT BIL: D1-22-346-93]
5 JULY 1993

PRACTICE AND PROCEDURE: Summary judgment - Order 14 Rules of the High Court 1980 - Admission by Counsel for the plaintiff that there are triable issues - Judgment on plaintiff's application for summary judgment will wipe out the writ which is heavily disputed - Affidavit must expressly depose and advert to the fact the defendant has no defence to the plaintiff's claim.

COMPANY LAW: Debenture - Receivers and Managers appointed - Validity of appointment challenged - Defendants' oppose the challenge - Triable issue - Authority of ex-General Manager to affirm affidavit on the authority given by a single Director of plaintiff - Need for a collective resolution of the Board of Directors of plaintiff company - No implied authority for one Director to bind the company.

The 1st defendant, Bank of Commerce (M) Berhad, ("the Bank") as the holder of Debentures dated 28 January 1988, 9 May 1991 and 5 November 1991 ("the Debentures") appointed the 2nd and 3rd defendants, as the Receivers and Managers, of the assets of the plaintiff, Twenty First Century Oils Sdn. Bhd. on the terms and conditions of the Debentures.

The plaintiff commenced proceedings by way of a writ challenging the appointment on the grounds that the appointment is not strictly in accordance with the provisions of the Debentures, and for this reason the plaintiff, sought an order, *inter alia*, that the 2nd and 3rd defendants, be removed as Receivers and Managers. The allegation that the appointment of the Receivers and Managers is in contravention of the provisions of the Debentures, is seriously challenged by the Bank, on the statement of defence filed on its behalf. The plaintiff then took out an application pursuant to O. 14 of the Rules of the High Court 1980, seeking, *inter alia*, an order for the removal of the 2nd and 3rd defendants, as Receivers and Managers of the plaintiff,

summarily. On behalf of the Bank, as well as the 2nd and 3rd defendants', affidavits were filed resisting the summary judgment application, and the allegation of the plaintiff as to the validity of the appointment of the Receivers and Managers. Objections were also taken on behalf of the defendants', that some 3 affidavits filed on behalf of the plaintiff, through its ex-General Manager and said to have been affirmed by him, on the authority given to him by one single Director of the plaintiff, are bad and not to be considered by the Court.

Held:

[1] On the admission made by Counsel for the plaintiff, that there are disputes *viz-a-viz* the Debentures, and that there are triable issues the Court can see no reason why the Court ought to entertain the plaintiff's application for summary judgment.

[2] The prayers asked for by the plaintiff in the application, if allowed, will virtually wipe out the writ which is heavily disputed and still pending.

[3] As the 1st defendant, has in its statement of defence controverted to allegations of fact made in the statement of claim, these allegations are matters which raise triable issues, which can only be resolved after a full trial.

[4] Since Counsel for the plaintiff has admitted, that the plaintiff's application is an O. 14 application, it is trite law that an affidavit in support of such application, must expressly depose and advert to the fact that the defendant has no defence to the plaintiff's claim.

[5] The allegation of lack of authority to appoint the Receivers and Managers, as contended by the plaintiff, is being seriously challenged by the Bank and this constitutes a triable issue and no summary judgment, ought to be given.

[6] The affidavits affirmed by the ex-General Manager of the plaintiff and filed in support of the plaintiff's application ought not to be considered by the Court for the reason that it is trite law, that no Director acting singly has an implied authority to bind the company.

[7] One single Director's power to bind the company can only arise by joining all the other Directors, in a collective resolution of the meeting of the board of directors of the company.

[Plaintiff's application dismissed with costs].

Legislation referred to:
Rules of the High Court 1980, O. 14

For the plaintiff - Paul Ong (Haminder Kaur with him); M/s. Paul Ong & Associates
For the 1st defendant - N. Chandran (Puspa Menon with him; M/s. Adnan, Sundra & Low
For the 2nd and 3rd defendants - Isabella; M/s. Iza Ng, Yeoh & Kit

JUDGMENT

Shaik Daud J:

The first defendant, who are bankers, is the holder of Debentures dated 28 January 1988, 9 May 1991 and 5 November 1991 executed between themselves and the plaintiff. On or about April 1992 the plaintiff went into financial difficulties requiring further injection of funds. As a result it was agreed that if the plaintiff could arrange for another party a placement of a fixed deposit of six million Deutsche Mark, the 1st defendant would arrange an overdraft facility of RM6 million for the use of the plaintiff. After the 6 million Deutsche Mark was arranged the plaintiff claims that the 1st defendant refused to honour their agreement. The plaintiff on 17 February 1993 obtained a Court order to restructure the company but on the application of 1st defendant and two other creditors the order was set aside, and is currently on appeal to the Supreme Court. The 1st defendant has thereby appointed the 2nd and 3rd defendants as Receivers and Managers. The plaintiff now before me by summons in chambers apply to have the appointment of the 2nd and 3rd defendants as Receivers and Managers be set aside.

What the plaintiff is saying is that the 1st defendant proceeded to appoint the Receivers and Managers pursuant to the three Debentures and the plaintiff is not happy with the appointment.

Learned Counsel for plaintiff submits that powers to appoint Receivers and Managers as contained in the three Debentures are specific and must be followed strictly. It is the contention of the plaintiff that the 1st defendant has not complied with the specific powers as contained in the three Debentures in their

appointment of the Receivers and Managers. He states that there are claims to be made by the plaintiff against the 1st defendant which is in the offing and thus at this stage it is not a *prima facie* situation where the 1st defendant being the Debenture holder can exercise its right to make the appointment. He states that there are issues to be tried in Court. He also confirms at a later stage that the plaintiff's application is in fact an Order 14 application. In fact the plaintiff is asking for a summary judgment of his writ of summons. The 1st defendant has filed affidavits objecting to the plaintiff's application. There are conflicting affidavits by either sides raising triable issues. Learned Counsel for the plaintiff in his submission virtually admits that there are issues to be tried. As such I can see no reason why the Court ought to entertain the plaintiff's application here.

The prayers asked for in this application if allowed would virtually wipe out the writ which is heavily disputed and is still pending. The first defendant has filed their statement of defence wherein 1st defendant has controverted to allegations of facts made in the statement of claim. I feel therefore the these matters are triable issues and can only be resolved after a full trial.

Since learned Counsel for the plaintiff has admitted that this application is an O. 14 application it is trite law that an affidavit in support of the application must expressly depose and advert to the fact that the defendant has no defence to the plaintiff's claim. Nowhere can I see in the plaintiff's affidavit in support of the application this averment.

To summarise since the plaintiff's application here is an application for summary judgment of their writ of summons, I find that these are triable issues. The lack of authority to appoint the Receiver and Manager as contended by plaintiff is being seriously challenged by the 1st defendant. Therefore I find these are triable issues and as such no summary judgment ought to be given.

Learned Counsel for the 2nd and 3rd defendants raises objections to affidavits filed on behalf of the plaintiff by one Yogendra Kumar Maheswari, particularly to affidavits in enclosures 22, 33 and 40. In all three affidavits Yogendra Kumar Maheswari admits that he was the former General Manager of the plaintiff and that he affirms the affidavit on the authority of a director of the plaintiff one Inder Mohan Tandon s/o Manohar Lall Tandon. In enclosure (40) he declares that he was authorised by all directors and yet mentions the name of only one. It is trite law that no director acting singly has implied authority to bind the company. One single director's power to bind the company is only by joining all the other directors in a collective resolution of the meeting of the board of directors. The deponent says he was the former General Manager of the plaintiff therefore for him to act for the plaintiff he must show that he has been delegated by the plaintiff. I agree with the submissions of learned Counsel for the second and third defendants that affidavits in enclosures (22), (33) and (40) ought not to be considered at all by the Court. To overcome this one day before the trial the same deponent filed an affidavit enclosure (41) to show that he was empowered by all directors. To my mind this affidavit is of no help since the deponent is no longer the General Manager he must show that he was properly delegated by a resolution of the board of directors.

Learned Counsel for plaintiff submits that as the deponent was the former General Manager of the plaintiff he was the best qualified to depose to any affidavit on behalf of the plaintiff as he is no stranger to the company. With respect the question is not whether he is best qualified or not but rather whether he has the authority to depose any affidavits for the company. I find that he has no authority and at the most his authority to do so is being questioned and challenged and that in itself is a triable issue.

For the above reasons I dismiss the plaintiff's application with costs.